

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7493 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHUNILAL MOHANLAL DAVE THROUGHHEIR CHANDRIKABEN C DAVE

Versus

DISTRICT INSPECTOR OF LAND RECORDS (DHRANGADHRA)

Appearance:

MR BR PARIKH for Petitioner

Ms.Harsha Devani, A.G.P. for Respondents

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/09/1999

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ petition is for issuing writ of mandamus directing the respondent No.1 to execute and implement the directions issued by the Mamlatdar, Halvad in Hakka Chokshi Case No. 15/94-95, Annexure : A to the writ petition, with further mandamus to the respondents No.2 to 5 to take appropriate legal action against respondent No.1 for getting and

executing the aforesaid direction dated 26.6.1995 contained in Annexure : A.

2. Learned Counsel for the petitioner and the learned A.G.P. have been heard. Affidavit, Counter Affidavit and Rejoinder Affidavit have been perused.

3. First contention of the learned Counsel for the petitioner is that the order Annexure : A has been passed by the Mamlatdar on 23.6.1995, but the same is not being implemented despite repeated reminders and legal notices sent to the respondents. In the order Annexure : A the Mamlatdar has given brief account of the case. It runs like this, that the petitioner's forefathers purchased old Survey No.1099, Area 5 Acres - 26 Gunthas from Joshi Revashanker Popatlal on 3.6.1946 through registered Sale Deed. In the process of new measurement Survey Nos.247, 257, 236/2 together were given against this 5 Acres - 60 Gunthas, but since this land was not in their possession the Application was made before the Deputy Collector praying for inquiry under Section 37(2) of the Bombay Land Revenue Code regarding disputed land for declaring the land as private ownership of the petitioners.

4. Inquiry under Section 37(2) of the Bombay Land Revenue Code was undertaken. The land was measured. Copy of measurement sheet was also submitted. Petitioners' case was that old Survey No.1099 escaped from the measurement and therefore he requested the D.I.L.R. to issue K.J.P. The Surveyor of District Inspector of Land Records office was examined and he has stated that old Survey No.1099 of Ranjitgadh originally belonged to Halvad sim and on separation of Ranjitgadh village from that sim this Survey No.1099 escaped in new measurement. On the request of the petitioner the land was measured as Survey No.335 paiki. The Mamlatdar came to three conclusions mentioned in order dated 23.6.1995. However, since the application was withdrawn by the petitioners the case was deleted from the case register. A direction was given that D.I.L.R. shall take necessary action to issue K.J.P. as per measurement. It is this direction which is sought to be enforced through this petition at the instance of the petitioners.

5. The contention of the learned A.G.P. is that in inquiry under Section 37(2) of the Bombay Land Revenue Code it was necessary for the Mamlatdar to decide the question of ownership. Learned Counsel for the petitioner, however, argues that there was no dispute regarding the ownership and it was due to sheer mistake

that Survey No.1099 was escaped as a result of separation of Halvad Sim and Ranjitgadh Village. This fact is mentioned in the order of the Mamlatdar as well. It further appears that because the petitioner thought that there was no dispute of ownership and the mistake was noticed by the Mamlatdar it was decided to withdraw this application. The mistake of ownership may be of a technical nature, inasmuch as because of omission of plot No.1099, Area 5 Acres - 23 Guntha as a result of separation that it was mentioned as part of Government waste land. Be that as it may, since there is no clear direction in the order of the Mamlatdar passed on 23.6.1995 that out of old Survey No.1099 5 Acres - 26 gunthas are to be entered in the name of the petitioners, the matter needs clarification. It thus appears from the order of the Mamlatdar that he was of the view that the land measuring 5 Acres 26 gunthas belongs to the petitioner. In any way for specific order regarding ownership of this land as required under Section 37(2) of the Bombay Land Revenue Code the matter is remanded to the Mamlatdar, Halvad to decide the question of ownership of old Survey No.1099, 5 Acres - 26 gunthas. The Mamlatdar shall permit the parties to adduce evidence regarding ownership of this plot, if the ownership is really disputed and within a period of one month from the date of production of copy of this order he shall specifically decide the question of ownership and thereafter issue necessary direction for issuing K.J.P. as per measurement and the said final order of the Mamlatdar shall be implemented within 15 days thereafter.

6. The petition is finally disposed with above direction. No order as to costs.

sd/-

Date : September 20, 1999 (D. C. Srivastava, J.)

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